



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

December 5, 1996

The Honorable Rodney Ellis  
Chair, Intergovernmental Relations Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 96-129

Re: Whether a municipality may establish a public improvement district under chapter 372, Local Government Code, without first having received a petition from property owners in the proposed district which meets the requirements of section 372.005 of the Local Government Code (ID# 39195)

Dear Senator Ellis:

You have asked this office whether a municipality may create a public improvement district under the terms of chapter 372 of the Local Government Code, when there has been no petition requesting the establishment of such a district signed by either fifty percent of the property owners or the owners of fifty percent of the taxable land area within the proposed district. We conclude that the municipality may not do so.

Chapter 372 of the Local Government Code, the Public Improvement District Assessment Act, provides for the creation, under certain circumstances and after the fulfillment of certain requirements, of "an improvement project that confers a special benefit on a definable part of the municipality." Local Gov't Code § 372.003(a).<sup>1</sup> The relevant requirement about which you ask is set forth in section 372.002:

Powers granted under this subchapter may be exercised by a municipality in which the governing body of the municipality initiates or receives a petition requesting the establishment of a public improvement district. A petition must comply with the requirements of Section 372.005.

You suggest that the first sentence of section 372.002 is susceptible of two different constructions, in that the verb "initiates" may take as its direct object either "a petition" or "a public improvement district." If one chose the second alternative, it would be possible to argue that the petition is not a prerequisite for the establishment of a public improvement district, but merely one

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<sup>1</sup>Section 372.041 of the Local Government Code gives slightly expanded authority to home-rule municipalities with respect to the creation of such districts. However, section 372.041(b) makes clear that such creation must "comply with the general law of the state relating to the creation of improvement districts."

method of beginning the process of establishing such a district. While there may be such an ambiguity in the statutory language, the legislative history of the statute suggests that the petition is a necessary step in establishing a public improvement district.

The language in question was originally added to the Public Improvement District Assessment Act by Senate Bill 787. Act of May 26, 1983, 68th Leg., R.S., ch. 587, 1983 Tex. Gen. Laws 3794, 3794-95.<sup>2</sup> According to the bill analysis from the House Committee on Urban Affairs:

Section 1 of the Public Improvement District Assessment Act is amended by deleting the provision requiring voter approval for a city to exercise the powers granted by the Act. A new *requirement* is substituted *calling for a petition requesting the establishment of a public improvement district* signed by either 50% of the property owners or owners of 50% of the taxable land area within the proposed district.

House Comm. on Urban Affairs, Bill Analysis, S.B. 787, 68th Leg. (1983) (emphasis added).

Similarly, the section-by-section description in the senate bill analysis reads:

Section 1. "Title and applicability" is amended by deleting a provision which requires voter approval at an election for a city to exercise the powers granted under this Act. Substituted for the election is a provision allowing a city to exercise [sic] the powers of this Act *upon receiving "a petition requesting the establishment of a public improvement district" signed by either 50% of the property owners or owners of 50% of the taxable land within the proposed district.*

Senate Comm. on Intergovernmental Relations, Bill Analysis, S.B. 787, 68th Leg. (1983) (emphasis added).

Testimony in support of the legislation is to the same effect, as, generally, are statements by Senator Vale, the author of the legislation.<sup>3</sup> At the hearing of the Senate Intergovernmental Relations

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<sup>2</sup>The Public Improvement District Assessment Act, which was article 1269j-4.12, V.T.C.S., was recodified as chapter 372 of the Local Government Code. Act of May 1, 1987, 70th Leg., R.S., ch. 149, sec. 1, 1987 Tex. Gen. Laws 707, 1163-71. At that time, the fifty percent requirement was moved to section 372.005, and referenced in what is now the second sentence of section 372.002.

<sup>3</sup>One statement by Senator Vale may be read as evidence for the view that the city may initiate the district without a petition. At the second reading, on May 5, 1983, Senator Vale said that the bill authorized cities "to establish public improvement districts to provide certain improvements and supply services for the district out of assessments levied on property in the district initiated through the city or by the property owners." However, given contrary statements by the

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Committee on April 12, 1983, Senator Vale said that the bill was introduced at the request of San Antonio, to "allow[] them to establish some improvement districts to finance certain improvements and services for districts out of special assessments that are levied on the property of the district *at the request of the property owners.*" (Emphasis added.) In her testimony on that day in support of the legislation, Karen Kliwer, Director of Intergovernmental Relations for San Antonio, said the legislation's "strength is that it's a program that is to be initiated by the affected property owners."

Ms. Kliwer's testimony to the House Committee on Urban Affairs on May 18, 1983, was to the same effect:

This bill is one that would be very important for the city in that it allows the property owners to design a plan that meets their needs and submit it to the city council for consideration and they would be willing to participate in the payment of that plan.

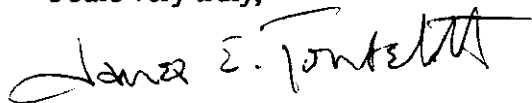
Finally, in moving that the senate concur with house amendments to the legislation on May 26, 1983, Senator Vale characterized the bill as one "that permissively *allows the property owners* of some property in a designated area *to come to the city council* . . . to impose upon them a tax for the purposes of upgrading and promoting the area." Debate on S.B. 787 on the Floor of the Senate, 68th Leg., (May 26, 1983) (tape available through Senate Staff Services Office) (emphasis added.)

Given the weight of this evidence, our view is that the legislature intended that the power to initiate such districts should be exercised by the property owners, and that therefore the petition referenced in section 372.002 of the Local Government Code and described in section 372.005 of the Local Government Code is a prerequisite for the establishment of a public improvement district.

### S U M M A R Y

The petition referenced in section 372.002 of the Local Government Code and described in section 372.005 of the Local Government Code is a prerequisite for the establishment of a public improvement district.

Yours very truly,



James E. Tourtelott  
Assistant Attorney General  
Opinion Committee

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<sup>3</sup>(...continued)

senator and Karen Kliwer, Director of Intergovernmental Relations for the City of San Antonio, at whose instance the legislation was offered, as well as the evidence of the bill analyses, we do not believe that this single utterance should be given great weight.